

1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF NEW YORK

3 Case No. 8-16-75545-reg

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5 In the Matter of:

6

7 DOWLING COLLEGE,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 290 Federal Plaza

14 Central Islip, New York 11722

15

16 December 17, 2018

17 1:43 PM

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21 B E F O R E :

22 HON ROBERT E. GROSSMAN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: MT/DB

1 HEARING re [74] ADJ Order Scheduling Initial Case Management
2 Conference.

3

4 HEARING re 624] ADJ Motion to Amend Final Order Authorizing
5 Debtor to Obtain Postpetition Financing and Use Cash
6 Collateral and Granting Adequate Protection by Ronald J
7 Friedman on behalf of Official Committee Of Unsecured
8 Creditors

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10 HEARING re Confirmation Hearing

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 CLERK: Matters Number 77 through 79, Dowling
3 College.

4 MR. SOUTHARD: Good afternoon, Your Honor. Sean
5 Southard, of Klestadt Winters Jureller Southard and Stevens,
6 on behalf of Dowling College, Debtor in Possession. With me
7 this afternoon are my colleagues, Joseph Corneau and Lauren
8 Kiss, Your Honor.

9 THE COURT: Let's get everybody else.

10 MR. MCCORD: Good afternoon, Your Honor.
11 Certilman Balin, by Richard McCord (indiscernible) ACA.

12 MR. HAMMEL: Good afternoon, Your Honor. Ian
13 Hammel, of Mintz, for UMB Bank as Trustee.

14 MR. YANG: Good afternoon, Your Honor. Stan Yang,
15 for the U.S. Trustee.

16 MR. KLEINBERG: Howard Kleinberg, Meyer Suozzi,
17 for the members of the Board of Trustees.

18 MR. FRIEDMAN: Good afternoon, Your Honor. Ronald
19 Friedman, from Silverman Acampora, counsel to the Official
20 Committee of Unsecured Creditors, with my colleague, Brian
21 Powers.

22 CLERK: Please state your phone appearance.

23 MS. ROUPINIAN: Good afternoon, Your Honor. Rene
24 Roupinian, of Outten & Golden, appearing on behalf of Lori
25 Zaikowski and (indiscernible).

1 THE COURT: Is that it? Okay.

2 MR. SOUTHARD: Thank you, Your Honor. Again, for
3 the record, Sean Southard, on behalf of Dowling.

4 Your Honor, before me move into the formal
5 presentation of the agenda this afternoon, I thought we
6 might spend just a minute to reflect on where we started.

7 We were here first before Your Honor on this case
8 just over two years ago. Dowling College had formally shut
9 down its operations after losing its accreditation in the
10 summer of 2016.

11 This Chapter 11 case was filed in order to
12 effectuate an orderly liquidation of Dowling's significant
13 real estate assets, all with the goal of maximizing value
14 for all stakeholders involved.

15 The prepetition secured creditors, Your Honor,
16 that are comprised of essentially bond trustees and an
17 insurer, consented to funding that liquidation process by
18 paying all of the administrative costs incurred in the case,
19 including the maintenance of the properties, and have made
20 good on those commitments throughout the course of the case,
21 funding, by our calculation, just over \$10 million by the
22 time we go effective under the DIP financing.

23 Your Honor, the Unsecured Creditors' Committee was
24 formed early in the process and took an active role in the
25 case. And as Your Honor will recall, several months into

1 the case the Committee and the secured creditors negotiated
2 a global settlement in relation to final DIP financing
3 approval, which establish certain baseline recoveries for
4 unsecured creditors, essentially tracking the different
5 collateral pools of the prepetition secured and now DIP
6 lenders collateral.

7 That deal appeared to be working well until we
8 completed the Brookhaven campus sale process, and the
9 results of that sale were well below the expectations of the
10 parties at the time that the original intercreditor deal was
11 cut.

12 The net effect, Your Honor, was that there was a
13 significant shortfall in the amounts available under the
14 original deal for unsecured creditors. That original
15 intercreditor deal basically would have set aside about
16 \$885,000 in favor of the unsecured creditors.

17 And as Your Honor will recall, part of that
18 original settlement construct involved the unsecured
19 creditors essentially agreeing to fund 50 percent of the
20 allowed priority claims pool that would be necessary to
21 confirm the Chapter 11 plan.

22 So, notwithstanding the global settlement that we
23 reached with the former employees recently, which indeed
24 helped pave the way for confirmation, the estimated priority
25 claims pool of roughly \$3 million had to be satisfied in

1 order to confirm this plan, and the Committee, under its
2 original intercreditor agreement, was short by approximately
3 \$615,000, based on the priority claims portion.

4 So, the creditors, with the assistance of the
5 Debtor, went back to the negotiating table and came up with
6 a revised deal. And the creditors in the revised
7 settlement, which is now incorporated into the plan before
8 Your Honor for consideration this afternoon, further agreed
9 that the secured creditors would fund that shortfall in
10 order to confirm this plan.

11 Overall, then, if Your Honor were to approve
12 today, the secured creditors will have contributed
13 approximately \$3.3 million from the proceeds of their
14 collateral for the benefit of junior priority creditors.

15 \$300,000 of that amount was set aside to be funded
16 to the trust in order for the trust to make a minimal
17 distribution to unsecured creditors, and also to fund the
18 prosecution of causes of action that that trust intends to
19 pursue.

20 Your Honor, in exchange for paying those
21 additional amounts, the secured creditors requested, and the
22 Committee agreed, to revise the threshold of baseline
23 recovery for general unsecured creditors before which the
24 deficiency claims of those secured creditors would
25 participate under the plan construct from 10 percent down to

1 five percent, as the original deal had called for.

2 And really, that revised settlement, Your Honor,
3 by the Committee's motion is the first matter that's on for
4 today on today's calendar, and is really integral to the
5 plan and --

6 THE COURT: Yep.

7 MR. SOUTHARD: -- confirmation of the plan, which
8 the Debtor intends to proceed with afterward. So, without
9 further comments at this point, Your Honor, I think we could
10 proceed to the first matter on the agenda, which is the
11 Committee's motion in support of the revised settlement,
12 which again, underlies the plan that's before you this
13 afternoon.

14 MR. FRIEDMAN: Thank you, Mr. Southard; thank you,
15 Your Honor. As Mr. Southard has very amply set forth, Your
16 Honor, the motion to amend the final order provides a
17 benchmark for recovery for the unsecured creditors.

18 One thing to note, obviously, was the overwhelming
19 balloting and voting in favor of the plan. My office
20 received dozens of telephone calls and inquiries from
21 creditors and parties in interest as a result of the
22 solicitation, and we are certainly pleased with the response
23 from the voting and the support that the plan has achieved.

24 In consultation with the Committee and reviewing
25 all of the facts and circumstances that are present in this

1 case, Your Honor, and certainly keeping in mind the
2 agreements between the Committee and the secured creditors
3 from the outset of the case about how the case would be
4 administered and the various carveout arrangements, and then
5 having the shortfall from the Brookhaven sale proceeds
6 closing not be able to walk through the waterfall in the way
7 that we had originally envisioned, warranted the revision to
8 the stipulation between the creditors, meaning the two
9 bondholder creditors and certainly the Committee.

10 And that settlement, Your Honor, is certainly
11 amply set forth in the motion. No creditors or parties in
12 interest have opposed that motion. We believe that that
13 motion and that stipulation provides a significant benefit
14 to the estate; certainly warrants approval under all the
15 standards under Rule 9019 and the Trailer Ferry case, as
16 well as all of the Iridium factors.

17 And most notably, Your Honor, in reviewing the
18 matters, and certainly preparing for today's hearing, we
19 took an economic analysis. And just to bring the lens back,
20 the entire case so far, Your Honor, has been without any
21 intercreditor skirmishes since the appointment of the
22 Committee, the Committee's counsel, certainly the Committee
23 themselves, Debtors, the Debtors' professionals, the secured
24 creditors and their professionals --

25 THE COURT: Why should the unsecured creditors

1 give up \$600,000 for you to perform services?

2 MR. FRIEDMAN: Why should the unsecured creditors

3 --

4 THE COURT: Right.

5 MR. FRIEDMAN: -- give up \$600,000 for me to
6 perform services, or --

7 THE COURT: The litigation trust.

8 MR. FRIEDMAN: The litigation trust?

9 THE COURT: You guys basically gave away the
10 unsecured creditors' money to fund potential litigation
11 going forward. Why'd you do it?

12 MR. FRIEDMAN: Pretty simple answer, Your Honor.
13 The litigation --

14 THE COURT: Don't -- listen, this is going to be a
15 serious hearing today.

16 MR. FRIEDMAN: Yeah.

17 THE COURT: I am not interested in anybody being
18 flippant. I'm not interested in any smart answers. This is
19 not going to go well. I'm borderline furious at this case.
20 So, if you want to play games with me, you've got the wrong
21 day to do it.

22 So, I asked you a question. The question is what
23 was the basis of giving up money that the unsecureds would
24 otherwise have gotten to insure distributions to the
25 administrative creditors going forward to bring cases? Why

1 was that done?

2 MR. FRIEDMAN: It was done quite simply, Your
3 Honor, to ensure that there was funds available to fund the
4 go forward of the case, so that you had a litigation fund to
5 go through.

6 THE COURT: So, if there are no funds, you
7 wouldn't bring a case?

8 MR. FRIEDMAN: No, you would bring a case, but it
9 may be --

10 THE COURT: So?

11 MR. FRIEDMAN: -- done a little different basis.

12 THE COURT: Then why wasn't the funds carved out?
13 Take it out of the case that you succeed on?

14 MR. FRIEDMAN: On a go-forward basis, that may
15 well be the retention going forward so that the three --

16 THE COURT: Well, I haven't awarded any fees in
17 the past, so I don't know where that money's going. I still
18 have that money. That's not going. I haven't awarded any
19 final fees in this case.

20 MR. FRIEDMAN: Understood and acknowledged, Your
21 Honor. I'm just trying to answer the question of why was
22 there a trade --

23 THE COURT: I just got done with the case that
24 took several years. And major firm invested millions and
25 millions of dollars on behalf of the creditors and came out

1 ahead. They could've come out behind. But you're asking me
2 to carve out almost \$600 thou -- \$300 now and I think before
3 -- to insure that the administrative expenses are there to
4 cover potential litigation to the detriment of people who
5 got killed in this case, and nobody even wants to put up a
6 penny -- 10 cents for them. It's outrageous. It's
7 outrageous.

8 MR. FRIEDMAN: Your Honor --

9 THE COURT: Do you guys understand what happened
10 in this case? Does anybody understand it? You had an
11 institution. Nobody's been sued, nobody. There hasn't been
12 a single adversary filed. I have no idea if you guys
13 actually have a cause of action against anybody. I don't
14 know what exists. As I sit here today, nobody did anything.

15 I have a school that disappeared. Thousands of
16 kids are going to be prejudiced. Millions of dollars were
17 lost. I don't have any idea how that happened. Something
18 bad happened out there and nobody has brought a single cause
19 of action to this time, in two years, or whatever it is.

20 You asked permission months ago to file a case.
21 We gave that to you. No case is filed. I don't know why.
22 Maybe there is no case. In which case, I don't know what
23 everybody's fighting about.

24 Then what we do is you do a deal, which you agree
25 with, which causes me real concern about whether I'm going

1 to ever allow you in your capacity to take the role that's
2 contemplated in this plan. That's another thing we've got
3 to deal with --

4 MR. FRIEDMAN: Judge?

5 THE COURT: -- that nobody has objected to, with
6 the secured creditors, who loaned into this thing. I have
7 no idea why they loaned into it. Nobody has ever challenged
8 what they did. I don't know what the collateral is they
9 got. Everybody says they're fine, though. Let's not go
10 after them at all. Let's not check why they -- whether
11 their security interests are valid, whether there's any
12 potential causes of action against them; let's let them go,
13 because they're going to put up \$3 million. Really?

14 And now, when we have a conversation or a
15 discussion, which apparently people don't listen, and I
16 suggested that reducing the payout, the answer I got is,
17 that's not right; my client's going to lose money. You're
18 right. They're going to lose money. And that may
19 accelerate where this is going.

20 You don't treat people this way. You already used
21 the system. You came into bankruptcy to pay people five
22 cents. People who had no reason to get hurt. None. Zero.
23 These are students. They had to borrow money from the
24 government. They're going to owe that money for the rest of
25 their lives. And you guys are worried about whether you get

1 five or 10 percent. Seriously?

2 Now, I don't know how much I can do, but I can do
3 an awful lot to interfere with this case. I can't make you
4 put up money necessarily. But this case isn't going where
5 you guys think it's going, the way it's currently
6 structured. It's not going there. And you can show me all
7 the votes you want. Because what we're going to end up
8 doing is having a series of evidentiary hearings because I
9 cannot determine, as it's currently situated, that this is
10 in the best interests of creditors, and you had an unsecured
11 creditor who voted against, which means I have to make that
12 determination.

13 And I don't know what you're going to do under
14 1129, because I'm not prepared to do that today. And I can
15 tell you that the series of evidentiary hearings we'll have
16 will take you not less than through June, because I don't
17 have any time for these things. This is ridiculous.

18 What you're doing is not right, okay? The
19 argument, a lot of people voted in favor, is so irrelevant
20 to me. I don't care what they voted. The issue is as a
21 matter of law, can I determine that this is in the best
22 interest of creditors. These creditors got killed, the
23 people who provided services, the students.

24 What you filed is under seal. I read it,
25 obviously. And you're sitting here today asking me to do

1 this case based on what I read and what you put it under
2 seal? Really? I don't know how you want to proceed.

3 I'm prepared -- I'm not going to approve the
4 settlement right now. I prepared to go ahead with 1129. I
5 want a witness, and that witness is going to have to testify
6 as to all what else is happening here. Or we can just
7 adjourn the whole thing, and we'll see you in the spring.
8 Or you can come to your senses and reach an agreement.
9 That's all up to you. I don't want to waste your time. I
10 really don't want to waste your time. But the current plan
11 is not getting confirmed.

12 MR. SOUTHARD: Your Honor, could I make a
13 suggestion? Again, Sean Southard, for the record, hearing
14 Your Honor loud and clear.

15 THE COURT: Well, obviously I wasn't that clear
16 last time, so I figured I'd make it clearer this time.

17 MR. SOUTHARD: My suggestion is that we take a
18 break on the Dowling case and have a caucus among --

19 THE COURT: There's a room next door. Go use it.

20 MR. SOUTHARD: Thank you.

21 THE COURT: Thank you.

22 MR. FRIEDMAN: Thank you.

23 (Recess)

24 CLERK: Recalling Matter Number 77 through 79,
25 Dowling College.

1 MR. FRIEDMAN: Good afternoon again, Your Honor.
2 Ronald Friedman from Silverman Acampora, counsel to the
3 committee.

4 Your Honor, I'm pleased to report to the Court
5 that the parties to the settlement arrangement related to
6 the DIP order have modified the provision of the minimum
7 threshold back to the original 10 percent threshold that was
8 agreed to by all the parties at the consultation following
9 our last conference.

10 THE COURT: That's what I had agreed to, so we go
11 ahead.

12 MR. FRIEDMAN: Thank you, Your Honor. With that,
13 I'll turn the podium to Mr. Southard to move towards
14 confirmation.

15 THE COURT: You still want me to approve the
16 settlement, don't you?

17 MR. SOUTHARD: We do, Your Honor.

18 MR. FRIEDMAN: Yes, of course, we do, Your Honor.

19 THE COURT: Okay. The Court will grant that
20 motion.

21 MR. FRIEDMAN: Thank you.

22 MR. SOUTHARD: Thank you, Your Honor. Again, for
23 the record, Sean Southard on behalf of Dowling College.

24 Your Honor, that brings us to the second item on
25 this afternoon's agenda, which is the main event, so to

1 speak, and that is confirmation of the Debtors' plan of
2 liquidation. Your Honor, the plan is the product of
3 extensive negotiations.

4 THE COURT: Do we have an affidavit in this one?

5 MR. SOUTHARD: Your Honor, we do. We filed two
6 affidavits: one from Joseph --

7 THE COURT: I know I had suggested that I wanted a
8 live witness, but I'll go with the proffer.

9 MR. SOUTHARD: Thank you, Your Honor. We have
10 two, two declarations that were filed, and both of the
11 declarants are here today in Court.

12 THE COURT: Who are they?

13 MR. SOUTHARD: The first is --

14 THE COURT: Hold it. Who are they? Stand up,
15 please.

16 MR. SOUTHARD: Joseph Arena, Your Honor, of Epiq
17 Restructuring Services, LLC.

18 THE COURT: And?

19 MR. SOUTHARD: And Robert Rosenfeld --

20 THE COURT: Gentlemen, stand up, please.

21 MR. SOUTHARD: -- the Debtors' Chief Restructuring
22 Officer.

23 THE COURT: What's going to happen is there's
24 going to be what's called a proffer. Counsel is going to
25 tell me what you would have testified to if I put you on the

1 stand. When he's finished, I'm going to ask you if
2 everything he said was accurate relative to you, what you
3 would have testified to and that that's the way you would
4 have testified and that will be under oath. So you will be
5 under oath when you make that representation. You both
6 understand that.

7 MR. ROSENFELD: Yes.

8 MR. ARENA: Yes.

9 MR. SOUTHARD: Thank you, Your Honor. Your Honor,
10 as provided for in the disclosure statement approval order
11 that Your Honor entered, the Debtor commenced solicitation
12 on November 9th of this year, with a voting deadline of
13 December 10th.

14 As we will get to momentarily when we go through
15 the proffer, the plan did enjoy overwhelming support from
16 across each of the six voting classes: classes 1 through 5
17 were unanimous with their support; class 7 was nearly
18 unanimous, with just the one dissenting creditor out of 212
19 that voted. There were no objections filed or received in
20 relation to confirmation from any party.

21 And as we believe the Debtor will establish, Your
22 Honor, the plan and the Debtors' plan proponent have
23 satisfied all the requirements of Section 1129 in the
24 Bankruptcy Code and the bankruptcy rules and the local
25 bankruptcy rules.

1 With the support it has received as evidenced by
2 the voting results, the constituencies represented by
3 counsel here today and in compliance with all aspects of
4 applicable law, we believe the plan should be confirmed.

5 Your Honor, we -- in addition to the first amended
6 plan and the first amended disclosure statement as modified,
7 which were filed following the confirmation --

8 THE COURT: Which were modified to reflect the
9 transaction that you agreed to today.

10 MR. SOUTHARD: Well, when I said modified just
11 now, I was referring to the minor modifications that were
12 made following the disclosure statement hearing to reflect
13 some of the comments that were received at that hearing.
14 But they will -- what I would propose, subject to Your
15 Honor's thinking otherwise, is that the confirmation order,
16 which we would ask Your Honor to sign, would delineate the
17 update that was made based on negotiations.

18 THE COURT: Yeah, this is only an improvement of
19 what went out, so I don't feel any need to re-ballot the
20 case.

21 MR. SOUTHARD: That seems consistent with, I
22 think, the parties' understanding of Your Honor as well,
23 only an improvement from the unsecured creditor perspective.

24 So, Your Honor, in addition to those modified plan
25 and disclosure statement, we did file a supplement to the

1 first amended plan as modified. And that contains at Docket
2 No. 650, the plan administrator agreement, as well the
3 unsecured creditor trust agreement.

4 I've just mentioned the declaration of Joseph
5 Arena, which is Docket No. 652; that is what we referred to
6 as the voting declaration. Mr. Arena is with Epiq
7 Restructuring Services, which was our voting agent who was
8 responsible for tabulating the votes and reporting on those
9 to the Court and to the Debtor.

10 And then the declaration of Robert Rosenfeld, the
11 Debtors' CRO dated December 11th at Docket No. 653.

12 In addition, Your Honor, we did file a memorandum
13 of law going through the various legal aspects of
14 confirmation, including what we believe is the satisfaction
15 of Section 1129; that was docketed at No. 655. And then
16 finally, a proposed confirmation order at Docket No. 656,
17 which we will, again, intend to modify before submitting to
18 Your Honor today in addressing the latest changes that were
19 agreed to on the record.

20 Your Honor, I would -- I would move to admit the
21 voting declaration into evidence and the declaration of Mr.
22 Rosenfeld, but I will take the Court through a proposed
23 proffer on each of those declarations. As evidenced by that
24 voting declaration, Your Honor, all six voting classes --

25 THE COURT: Well, is there any objection to

1 admitting it? So without objection, and if it contain- --
2 you don't have to repeat what's in it; it'll be part of the
3 record.

4 MR. SOUTHARD: Thank you, Your Honor. The
5 declarants are here, obviously, and prepared to be crossed
6 to the extent that any party wishes to do so.

7 THE COURT: Does any party wish to have a live
8 witness in this case, either of the declarants? No
9 response. Court will accept the proffers of both parties,
10 place them in the record, and make findings based upon that.

11 MR. SOUTHARD: Thank you, Your Honor.

12 THE COURT: If you two gentlemen would stand up.
13 You both signed affidavits; is that correct?

14 MR. ARENA: Yes.

15 MR. ROSENFELD: Yes.

16 THE COURT: Is anything that we've introduced in
17 evidence, which are those two affidavits each of you
18 separately, do you have any reason to believe any of the
19 statements made in them are incorrect or untruthful?

20 MR. ARENA: No.

21 THE COURT: If I put you on the stand, would you
22 testify to exactly what's in those affidavits?

23 MR. ARENA: Yes.

24 THE COURT: You signed the affidavits and read
25 them.

1 MR. ARENA: Yes.

2 THE COURT: All right. And you're making these
3 statements under oath.

4 MR. ARENA: Yes.

5 THE COURT: Okay, we're done. We admitted it.

6 MR. SOUTHARD: Thank you, Your Honor. Your Honor,
7 as evidenced by the voting declaration, all six classes
8 voted in favor of the plan. As I mentioned before, classes
9 1 through 5 were unanimous in accepting the plan. Class 6
10 was not impaired and conclusively was presumed to have
11 accepted the plan; that's the priority claims.

12 Class 7, which is the general unsecured claims,
13 voted overwhelmingly in favor of the plan with a single
14 dissenting creditor; and that single dissenting creditor
15 amounted to less than one-half of 1 percent in number and 2
16 percent in amount that voted as such. All of the classes
17 have voted in favor of the plan, consistent with 1129.

18 Your Honor, no objections were filed or received.
19 We've moved the declarations into evidence, which I believe
20 established conclusively the satisfaction of 1129, as well
21 as 1123 of the Bankruptcy Code.

22 Your Honor, we believe those declarations
23 constitute the Debtors' direct case in support of
24 confirmation, which evidence proves the requirements of all
25 the required elements of the Bankruptcy Code, and that the

1 same are satisfied by a preponderance of the evidence.

2 So unless the Court has any additional questions,
3 we would request that the plan be confirmed here today.

4 THE COURT: Does anybody wish to be heard? No
5 response. Court believes that the case should be confirmed,
6 that there's adequate evidence to show that it complies with
7 1129 and the other bankruptcy applicable sections. Court
8 also believes that the final transaction agreed to by the
9 parties is in the best interests of creditors in the case.
10 And, therefore, the Court will grant confirmation.

11 MR. SOUTHARD: Thank you, Your Honor.

12 THE COURT: All right. This is another case -- I
13 mean, this case, you're going to have a life going on now, I
14 believe. But this year, we confirmed, at least in this
15 Court, FECS, which was a large charity, this case, and
16 another one which was a large case, it doesn't matter.

17 This and FECS, this and nonprofit FECS is a
18 charity, which is also nonprofit, raises very particular
19 concerns to the Court, and I'm sure raises it to you guys.
20 I mean, Mr. Friedman, nothing personally, by the way. I
21 know you probably --

22 MR. FRIEDMAN: (Indiscernible).

23 THE COURT: People know me by now, so don't take
24 it personally.

25 MR. FRIEDMAN: Understood.

1 THE COURT: I have great respect for the work you
2 all do, always have; I will continue to do that. We all
3 play roles in this process.

4 And I think -- I was just down in D.C. for four
5 days -- three days, three or four days, and the Chief
6 Justice of the United States has appointed me to a committee
7 that oversees the bankruptcy administration for the United
8 States, and there were three other bankruptcy judges,
9 circuit judges, district judges.

10 And that group is the one who sets the rules and
11 laws and makes the applications to Congress for changes in
12 statute, and it's quite a task. And I think that one of the
13 things that was the -- that came out to me, and this is from
14 both circuit judges and district judges from around the
15 country -- South Dakota and other places most of us have
16 never really practiced in or been -- there's an enormous
17 amount of respect for what bankruptcy courts bar bench does
18 in today's world.

19 The expectation in the future is that that will
20 even be more significant. We came out of 2008, a lot of the
21 restructuring of this country was done, you know, 20 miles
22 from here in the Southern District and in Delaware. I
23 suspect we're going to have additional issues going forward
24 based on all the economists' view.

25 But my concern is the million and one consumers in

1 this country that don't get the same representation. Most
2 of you guys don't really handle consumer cases; they can't
3 afford it. But that's the largest, like, millions' share
4 who appears in the federal courts and we're well aware of
5 that.

6 And I would say the Chief Justice, and many other
7 who are senior members of the Judiciary, have great concern
8 that we provide to these folks the best justice we can.
9 It's not perfect, but the best we can.

10 And when we have cases in this charitable area or
11 a case like Dowling where there's many, many folks who
12 didn't ask to get in this problem. I'm not saying the
13 lenders did either. It's not -- but there is an element
14 where the Court, at least this Court, does feel a
15 responsibility that maybe goes beyond just interpreting
16 statutes.

17 And so, sometimes people don't like it, but I have
18 the tendency and, as you all know, if I think it's right,
19 I'm going to do it; and if people want to appeal it, they'll
20 appeal it. Other Courts have to work.

21 But my role in life is to do what I think is right
22 within the law for the parties that appear in front of me.
23 Everybody can have an advantage. Secured creditors can take
24 it all if they try; unsecureds can be obstracter. I mean,
25 everybody's got a role.

1 The goal is to try to get everybody on the same
2 page. And many, many years ago when the practice of
3 bankruptcy was in the hallways in the Southern District on
4 those hard floors, and whether it was Bert Lifland, as a
5 lawyer in those days, or others -- and I was a little kid
6 watching -- that's where the deals got done.

7 And we've become very institutionalized done, but
8 it's still a practice that requires people understanding how
9 to make a deal, and those are the lawyers I have enormous
10 respect for because anybody can parrot a statute in heart;
11 most people can read, most.

12 And when you get to a case and you finish it --
13 Debtors' counsel, committee counsel, secured creditors --
14 everybody gets the credit for that. You all did a good job.
15 You represented your clients, there was push-pull.

16 So I have a lot of respect for you and I have a
17 lot -- I thank you a lot. I think there are a lot of people
18 who are going to be far better off today than if this case
19 had cratered, gone down in flames, or nobody had paid any
20 attention to it.

21 So from the U.S. Trustee's Office, all the people
22 who worked on the case, the associates who do most of the
23 work and the partners who stand up and speak, I want to
24 thank you. I wish you all a very happy holiday.

25 Now, you also want fee apps, I assume. Are we

1 going to get final apps in this case at some point?

2 MR. FRIEDMAN: Yes, Your Honor. We will -- the
3 plan provides that within 30 days of the effective date,
4 that professional will file their final fee apps. I think
5 what makes the most sense is for us to convene a discussion
6 among all those professionals and then reach out to chambers
7 --

8 THE COURT: If you get them in, we're doing them
9 right away.

10 MR. FRIEDMAN: -- for a date. I do appreciate
11 that, Your Honor.

12 THE COURT: Okay?

13 MR. FRIEDMAN: And I also, on behalf of the
14 Debtor, appreciate Your Honor's assistance with the case, as
15 well as Your Honor's staff, in dealing with some challenging
16 timing at various points of time.

17 THE COURT: Those are the good guys. I just get
18 to yell at you guys. It's chambers who tries to make me
19 look good on occasion. Thank you very much and have a great
20 holiday.

21 MR. FRIEDMAN: Thank you.

22 CLERK: All rise.

23 THE COURT: I didn't forget it.

24 MR. FRIEDMAN: I know.

25 THE COURT: It's going to the final fee apps.

1 MR. FRIEDMAN: Your Honor, we had a conversation
2 on the record at the time of the interim fee app in
3 September, and you said let's hold it until confirmation.
4 If you confirm before the end of the year, I will make sure
5 you get paid. Counsel and I had a colloquy and Mr.
6 Southard's office --

7 THE COURT: Do these guys uphold that?

8 MR. FRIEDMAN: And they're all electing on their
9 own to await and defer the final to get paid.

10 THE COURT: So you --

11 MR. FRIEDMAN: Nobody else has a comment.

12 THE COURT: Thank you. Adjourned for
13 (indiscernible) until the final fee apps.

14 (Whereupon these proceedings were concluded at 3:10 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya
Ledanski Hyde

Digitally signed by Sonya
Ledanski Hyde
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Date: January 2, 2019

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